

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PIERRE DEPREE HUSBAND,

Plaintiff,

v.

ANN TURNER, Madison Police Dept. Detective; and
DOROTHY DOHEY, Madison Police Dept. Detective,

Defendants.

ORDER

07-C-391-C

Plaintiff has asked the court to issue subpoena forms so that he can take the depositions of Dane County Circuit Court Judge David Flanagan, Assistant District Attorney Robert Kaiser and Assistant State Public Defender Robert Burke, and so that he can obtain a transcript of a motion hearing held at the Circuit Court for Dane County.

Fed. R. Civ. P. 28 through 32 require a party intending to take the deposition of a potential witness to

- Give reasonable advance notice of the deposition to opposing counsel and to the particular individual he wishes to depose;
- Arrange for the presence at each deposition of an officer authorized to administer

oaths by the laws of the United States or of the place where the examination is held;

- Arrange for stenographic or other accurate and trustworthy transcription of each deposition; and
- Either secure the agreement of each witness he wishes to depose to attend the deposition voluntarily or arrange for service of a subpoena upon each witness.

If a witness must be subpoenaed, the plaintiff will have to request a blank subpoena form from the court and show by affidavit

- The deponent refuses to testify voluntarily; and
- He has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the deponent; *or*
- He is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and requires assistance from the United States Marshal or a person appointed by the court; and
- He is prepared to tender to the marshal or other individual serving the subpoena a check or money order made payable to the deponent in an amount necessary to cover the daily witness fee and the deponent's mileage, as well as costs for room and meals if the witness's appearance at a deposition will require an overnight stay. Current rates are as follows: the daily witness fee is \$40; mileage is \$0.48.5 per mile; and

room and board for one night is \$138.

Because plaintiff has not advised the court that he has arranged for stenographic transcription of each deposition, that each person he intends to depose has not agreed to attend the deposition voluntarily, that he is unable to serve a subpoena on the proposed deponent without the assistance of the U.S. Marshal, and that he is prepared to pay the witness fees owed to the proposed deponent at the time the subpoena is served, his request for the issuance of subpoenas for Dane County Circuit Court Judge David Flanagan, Assistant District Attorney Robert Kaiser and Assistant State Public Defender Robert Burke will be denied without prejudice.

With regard to plaintiff's request to subpoena the transcript of a motion hearing held at the Circuit Court for Dane County, I will direct the clerk of court to refrain from sending plaintiff a subpoena form at this time because plaintiff has not explained why he could not obtain the transcript without subpoenaing it. Perhaps plaintiff believes that if he subpoenas the transcript from Ms. Scott he will not have to pay for it. That is not the case. With or without a subpoena, plaintiff is not entitled to free copies of documents that are maintained by the court reporter's office for the Circuit Court for Dane County. Instead, plaintiff may make arrangements directly with the court reporter to have the motion hearing transcribed for him.

ORDER

IT IS ORDERED that plaintiff's motion for the issuance of subpoenas to take depositions of witnesses is DENIED without prejudice. Plaintiff may renew his motion with an affidavit supplying the specific information set out above.

Further, IT IS ORDERED that plaintiff's motion for the issuance of a subpoena to obtain a copy of a motion hearing transcript from the Circuit Court for Dane County is DENIED.

Entered this 20th day of November, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge